

810-27-1-4-.02 Application of Apportionment and Allocation.

(1) *Definitions.*

(a) 1. For all taxable years ending before January 1, 1997, "taxpayer" means any corporation, Subchapter K entity, firm, association, governmental unit or agency or person acting as a business entity in more than one state.

2. For all taxable years beginning after December 31, 1996, "taxpayer" means any corporation, Subchapter K entity, firm, association, governmental unit or agency or other person acting as a business entity in more than one state, but does not include any individual.

(b) "Apportionment" refers to the division of net income between jurisdictions by the use of a formula containing apportionment factors.

(c) "Allocation" refers to the assignment of net income to a particular jurisdiction.

(d) "Business activity" refers to the transactions and activity occurring in the regular course of a trade or business of a taxpayer. Income from business activity includes business and nonbusiness income.

(e) "Purely personal services by an individual" refers to services rendered by a natural person either as an employee or which are personal services not involving the employment of capital other than a de minimis amount.

(f) "Employee" means (A) any officer of a corporation, or (B) any individual who, under the usual common-law rules applicable in determining the employer-employee relationship, has the status of an employee. Generally, a person will be considered to be an employee if included by an employer as an employee for purposes of the payroll taxes imposed by the Federal Insurance Contributions Act.

(g) "Personal services" refers to any activity for a taxable year which are generally recognized and accepted as rendering services of a personal character. Fields of activities generally recognized and accepted as rendering services of a personal character are, but not limited to, health (the provision of medical services by physicians, nurses, dentists, and other similar health-care professionals), law, engineering (including surveying and mapping), architecture, accounting, actuarial science, performing arts (the provision of services by actors, actresses, singers, musicians, entertainers, athletes, and similar artists), and consulting (the provision of advice and counsel).

(2) *Application of Article IV.*

(a) *Apportionment.* If the business activity in respect to any trade or business of a taxpayer occurs both within and without this state, and if by reason of such business activity the taxpayer is taxable in another state, the portion of the net income (or net loss) arising from such trade or business which is derived from sources within this state shall be determined by apportionment in accordance with section 40-27-1, Articles IV.9 to IV.17.

(b) Reserved.

(c) *Allocation.* Any taxpayer subject to the taxing jurisdiction of this state shall allocate all of its nonbusiness income or loss within or without this state in accordance with section 40-27-1, Articles IV.4 to IV.8.

(d) *Persons to which Article IV does not apply.* Any taxpayer shall not allocate and apportion his net income as provided in Article IV if such taxpayer has income from a business activity as

1. a financial organization,
2. a public utility, or

3.(I) for all taxable years ending before January 1, 1997, the rendering of purely personal services by a resident individual. Purely personal services of a resident individual are involved in the performance of personal services in any field, only if more than 95 percent of the time spent by an individual is devoted to the performance of personal services. For purposes of determining whether this more than 95 percent test is satisfied, the performance of any activity incident to the actual performance of personal services is considered the performance of personal services. Activities incident to the performance of personal services include the supervision of employees engaged in directly providing personal services to clients, and the performance of administrative and support services incident to such activities.

(I) EXAMPLE: Taxpayer A, a resident individual of Alabama, is compensated for services as an employee which are rendered in Alabama and in State G. Taxpayer A is not permitted to allocate and apportion net income under Article IV. Relevant to this determination is the fact that the taxpayer is an employee.

(II) EXAMPLE: Same facts as (I) above except that Taxpayer A is treated as an independent contractor required, in order to render personal services, to purchase and use a vehicle, a computer, software, and office supplies. Taxpayer A is not permitted to allocate and apportion net income under Article IV. Relevant to this determination is the fact that the taxpayer is rendering services of a personal character involving the employment of a de minimis amount of capital for the required purchases

(III) EXAMPLE: Taxpayer D, a resident individual of Alabama, owns medical offices in Alabama and in State G with employees (receptionist, bookkeeper, nurse, etc.) in both offices and uses a significant amount of medical office equipment in providing medical care and lab tests. Taxpayer D is permitted to allocate and apportion net income under Article IV. Relevant to this determination is the fact that the taxpayer's business activity is not purely personal since the taxpayer employs a significant amount capital in the production of revenue.

(ii) For all taxable years beginning after December 31, 1996, Article IV does not apply to an individual.

(e) *Public utility election.* If a taxpayer has income from business activity as a public utility which is not permitted to allocate and apportion net income pursuant to (2)(d) 2. above but derives more than 50 percent of income from business activities otherwise subject to this regulation, the taxpayer may elect, with a timely filed original return, to allocate and apportion the entire net income as provided for in Article IV of § 40-27-1.

1. If a taxpayer engaged in multistate business does not elect the reporting option available in (e) above or is not eligible to make the election then the taxpayer shall use separate (direct) accounting to determine income earned in this state.

(3) *Consistency and Uniformity in Reporting.*

(a) *Year to year consistency.* In filing returns with this state, if the taxpayer departs from or modifies the manner in which income has been classified as business income or nonbusiness income in returns for prior years, the taxpayer shall disclose in the return for the current year the nature and extent of the modification.

(b) *State to state consistency.* If the returns or reports filed by a taxpayer for all states to which the taxpayer reports under Article IV of the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the classification of income as business or nonbusiness income, the taxpayer shall disclose in the return to this state the nature and extent of the variance.

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